Supreme Court, U.S.
FILED
OCT 12 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-511 (2)

In The
Supreme Court of the United States
October Term, 1985

PAK-MOR MANUFACTURING COMPANY,
Petitioner,

vs.

JERRY JONES and SANDRA JONES,
husband and wife,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT IN AND FOR THE STATE OF ARIZONA

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QUESTION PRESENTED FOR REVIEW

Whether a discretionary decision by the Arizona Supreme Court regarding the procedural issue of the legal sufficiency of an offer of proof, in a products liability action arising under state law, meets the requirements for review as stated in 28 U.S.C. § 1257(3)?

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AUTHORITIES:

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STATEMENT OF THE CASE

The Respondents accept and are bound by the recitation of facts as recorded by the Supreme Court of Arizona in its opinion. (Petition for Writ of Certiorari, App. 2-4). Respondents specifically reject the slanted recharacterization of the facts as recited by the Petitioner.

On September 27, 1982, a jury unanimously returned a verdict in favor of the Respondents in the principal amount of $1,324,000.00. A bond was posted by the National Surety Company in the amount of $1,400,000.00.

The jury award was reviewed and affirmed by the trial court, the Arizona Court of Appeals and the Supreme Court of Arizona.

Also, the Petitioner sought protection from the United States Bankruptcy Court, Western District of Texas, San Antonio Division and the United States District Court, for the Western District of Texas, San Antonio Division. These courts, as the Arizona courts, rejected the Petitioner's relief.

In addition, the Petitioner filed an "Emergency Application for Stay of Enforcement of Judgment Pending Application to the United States Supreme Court for Writ of Certiorari." This relief was denied by Justice Rehnquist on July 12, 1985.

On July 18, 1985, the National Surety Company paid and disbursed to Respondents the principal sum of $1,400,000.00. Accordingly, the underlying judgment rendered in this case has been paid and the only sums due and owing are interest on the principal amount.

SUMMARY OF ARGUMENT

This products liability action was filed in the State Court of Arizona under Arizona law.

A new standard for the admissibility of evidence of safety history was promulgated by the Supreme Court of Arizona.

The Arizona Supreme Court, after review, held that the evidence contained in the Petitioner's offer of proof was deficient in foundation and failed to indicate that if the evidence was admissible it might have affected the verdict.

The Petitioner's request for reversal and/or remand to the trial court for additional proceedings was considered and rejected by the Arizona Supreme Court.

Accordingly, the Petitioner was afforded a hearing under the new standard and therefore was not denied equal protection nor due process of law.

Traditionally, these discretionary decisions of state evidentiary law do not rise to the constitutional proportions required to invoke the jurisdiction of the United States Supreme Court under 28 U.S.C. § 1257.

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ARGUMENT

28 U.S.C. § 1257, states in relevant part:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> . . . .
>
> (3) By writ of certiorari . . . where any title, right, privilege or immunity is specifically set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

The Petitioner sidesteps the rigorous showing required and fails to demonstrate the manner in which it was denied equal protection of the laws or due process of the laws by the courts' ruling on this procedural issue.

Instead, the Petitioner presumes its denial of these constitutional rights and concludes that since remand was granted in *Erie Railroad Company vs. Tompkins,* 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938); *Weeks vs. United States,* 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652 (1914); *Mapp vs. Ohio,* 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed. 2d 1081 (1961); *Gideon vs. Wainwright,* 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799 (1963); *New York Times Company vs. Sullivan,* 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed. 2d 686 (1964); *Ford Motor Company vs. National Labor Relations Board,* 305 U.S. 364, 59 S.Ct. 301, 83 L.Ed. 221 (1939); and *United States vs. Salvucci,* 448 U.S. 83, 100 S.Ct. 2547, 65 L.Ed. 2d 619 (1980), that this matter should likewise be remanded.

The landmark cases upon which the Petitioner relies address federal questions involving fundamental rights of national import.

By contrast, the Petitioner's issue involves an evidentiary ruling, of a procedural nature, in a state court products liability case.

The Supreme Court of Arizona considered the Petitioner's request for remand on this evidentiary issue. In so doing, the Court observed that although the Petitioner claimed it was able to demonstrate a lack of prior accidents, the evidence:

> "Did not indicate that there existed any evidence to warrant the inference that the absence of claims tended to prove a lack of accidents." (Petitioner's Writ of Certiorari, App. 20)

The Court also observed that although the issue pressed by Petitioner was that there was a total lack of other accidents that the

> "Defendant's offer of proof is not that no similar accident had occurred, but really 'that they were relatively few in number.'" (Petitioner's Writ of Certiorari, App. 20)

The Petitioner had the obligation to record an offer of proof on the issue of safety history which would demonstrate, if proven, that there was a lack of accidents and that the admission of the evidence might affect the ultimate result.

The Petitioner simply did not meet its burden.

———o———

CONCLUSION

Objection to a State Supreme Court's application of state law does not raise a federal question appropriate for review by the United States Supreme Court. 28 U.S.C. § 1257(3); *Agins vs. City of Tiburon,* 100 S.Ct. 2138, 447 U.S. 255, 65 L.Ed. 2d 106 (1980).

The issue urged by the Petitioner does not involve a deprivation of a substantive constitutional right, but rather a procedural issue of state law.

Accordingly, it is respectfully requested that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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